

**AMENDMENTS TO THE DRAWINGS**

The attached sheets of drawings include changes to Figures 3 and 4. These sheets, which include only Figures 3 and 4, replace the original sheets including Figures 3 and 4.

Attachment: Replacement Sheets 3/5 and 4/5.

### **REMARKS**

This paper summarizes the telephonic interview between Examiner Gilbert and the undersigned attorney on December 21, 2006, and is responsive to an official action dated August 22, 2006. Amendments to the Figures 3 and 4 are submitted herewith to comply with a requirement of form expressly set forth in the previous official action. The amendments can properly be entered under 37 C.F.R. § 1.116.

### **Drawings**

The drawings were objected to for failing to comply with 37 CFR § 1.84(p)(4) because the lead lines for reference characters 10 and 15 were not clear. The lead lines have been corrected, support being found in the original application, for example at p. 7, first paragraph, p. 9, penultimate paragraph, and Examples 5 and 6 on pp. 16-17. In each figure, reference numeral 10 now clearly corresponds to permeable membrane and reference numeral 15 corresponds to the contact adhesive.

Corrected drawings on replacement sheets are submitted herewith.

### **Claim Objections**

Claim 1 was objected to for informalities on the alleged basis that it recited “-,” on line 3. As explained in the telephonic interview, the designation objected to on line 3 is apparently the comma which was deleted by way of strikeout type font (i.e., “;”). Agreement was reached that the objection would be withdrawn. For the examiner’s convenience, a clean set of the pending claims is submitted herewith.

### **Finality of the rejection**

As explained in the telephonic interview, the ability of the applicants to understand of the true intent of the rejections in view of the Gyory et al. reference, and to provide appropriate and meaningful responses, has been hindered by the lack of appropriate citations. Furthermore, the prejudice is compounded by the omission of the non-standard definition of “between” that the Patent Office had been applying to the claims. Accordingly, it is respectfully requested again that the finality of the rejection be withdrawn. See 37 C.F.R. § 1.104(a)(2), “[t]he reasons for any adverse action or any objection or requirement will be stated and such information or references will be given as may be useful in aiding the applicant . . . to judge the propriety of continuing the prosecution.” See also MPEP § 707 Completeness and Clarity of Examiner’s Action.

**CONCLUSION**

Entry of the amendments to the figures to comply with formalities raised in the prior action is hereby requested. Furthermore, reconsideration and withdrawal of the finality of the rejection are requested.

Should the examiner wish to discuss the foregoing, or any matter of form or procedure in an effort to advance this application to allowance, the examiner is urged to telephone the undersigned attorney at the indicated number.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

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December 22, 2006

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No. : 10/820,553 )  
 Confirmation : 8366 )  
 )  
 Applicants : Fischer et al. )  
 Filed : April 8, 2004 )  
 )  
 Title: TRANSDERMAL DELIVERY )  
 SYSTEM (TDS) WITH ELECTRODE )  
 NETWORK )  
 )  
 Art Unit : 3767 )  
 Examiner : GILBERT, Andrew M. )  
 )  
 Atty Docket : 29473/11372A )  
 Customer No. : 04743 )  
 )

**APPLICANTS' SUMMARY OF TELEPHONIC INTERVIEW**  
**HELD DECEMBER 21, 2006**

Mail Stop AF  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

The undersigned attorney thanks Examiner Gilbert for the courtesy in agreeing to a telephonic interview on short notice. The interview was held between the undersigned attorney and Examiner Gilbert, with no others participating.

No exhibit was shown and no demonstration was conducted. The claims were discussed in general, with specific reference to elements of claim 1.

The applied prior art references in the official action of August 22, 2006, were discussed. The principal proposed amendment of a substantive nature discussed was amending the element of claim 1 as shown below:

a reservoir containing said substance to be delivered, the reservoir formed by a contact adhesive and provided stacked between the carrier layer and one or more counter electrodes

The general thrust of the primary argument of the applicant was that the three applied references clearly lacked a reservoir provided between the carrier layer as claimed and one or more counter electrodes. The examiner for the first time revealed that the Patent Office was interpreting the word “between” in some manner such that it did not necessarily require literal betweenness, but rather that it encompassed any set of elements through which a continuous line could be drawn, whether the line be straight or not straight. In particular, the examiner expressed an interpretation of “between” with respect to the pending claims such that in a combination of an electrode over a reservoir on one area of skin, adjacent to an electrode on another area of skin, the reservoir would be “between” the electrodes.

The applicants, through the undersigned attorney, disagreed. However, with the intent to advance the application to allowance, the applicants proposed amending the claims to recite that the reservoir was “stacked between” the recited elements, as described above.

The examiner agreed in principle that such an amendment would place the claims in condition for allowance, but expressed the opinion that a new search of the prior art would have to be conducted.

The applicants presented proposed amendments to Figures 3 and 4, and the examiner agreed that the proposed amendments adequately addressed the pending rejection.

The undersigned attorney pointed out that it appears that the column and line citations with respect to the nearly every alleged element in the Gyory et al. patent are in error, apparently carried over from the citations to the Henley reference. The undersigned attorney expressed the opinion that the ability to understand of the true intent of the rejection as to each of these elements, and to provide appropriate and meaningful responses, was hindered. The undersigned attorney requested withdrawal of the finality of the rejection on this basis, and the examiner refused to do so, asserting that the elements alleged to be described in the reference were there, and the examiner pointed out the range of column 6, line 44, to column 7, line 50.

The applicant also explained to the examiner that the notation objected to in claim 1 on line 3 is apparently the comma which was deleted by way of strikeout type font (i.e., “;”). The examiner agreed, and indicated that the objection could be withdrawn. For the examiner’s convenience, a clean set of the pending claims is submitted with the amendment after final filed concurrently herewith.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

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